

Guidelines for Implementing Workforce Investment Act Waivers

Texas Workforce Commission
WORKFORCE DEVELOPMENT DIVISION

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Overview

The Workforce Investment Act of 1998 (WIA) provides authority for the Secretary of Labor to waive statutory and regulatory requirements of WIA and the Wagner Peyser Act. The Texas Workforce Commission (Commission) has sought and received waivers from the U.S. Department of Labor Employment and Training Administration (DOLETA) regarding certain WIA requirements. The intent of the waivers is to provide Local Workforce Development Boards (Boards) and the State of Texas with the greatest possible flexibility to design and deliver services that meet the needs of employers and job seekers.

This guide provides:

- general information on all approved waivers within each category; and
- detailed procedural guidance and requirements for implementing the waivers.

Waivers listed in this guide fall within the following categories:

- **Commission-Specific Waivers**—may directly or indirectly affect Boards; however, there is no action that Boards are required to take to implement the waivers.
- **Board-Specific Waivers**—apply to all local workforce development areas (workforce areas) and require action if a Board chooses to implement the waivers.

The following waivers are addressed in this guide:

Commission-Specific Waivers	
<i>Waiver</i>	<i>Original Approval Date</i>
Common Measures and Integrated Performance	July 1, 2006
Rapid Response/Incumbent Worker Training	July 20, 2005 (Modified November 10, 2009)
Contracting for Board Performance Measures	July 1, 2005
Extension of Certification Period for Currently Certified Training Providers	January 3, 2003
Reallocation of Recaptured WIA Funds	November 17, 2010

Board-Specific Waivers	
<i>Waiver</i>	<i>Original Approval Date</i>
Employer Contribution for Customized Training	January 3, 2003 (Modified November 10, 2009)
Transferring Funds between Adult and Dislocated Worker Programs	January 3, 2003 (Modified November 10, 2009)
Older and Out-of-School Youth Use of Eligible Training Provider List	January 3, 2003
WIA Formula Funds Used as Local Activity Funds	August 19, 2003 (Modified November 10, 2009)
Employer Reimbursement for On-the-Job Training	November 17, 2010

DOLETA approval letters detailing Commission-specific and Board-specific waivers are available at <http://www.twc.state.tx.us/boards/wia/wiawaivers.html>.

Commission-Specific Waivers

On May 9, 2011, DOLETA approved the Commission's request to extend the following Commission-specific waivers through June 30, 2012:

Common Measures and Integrated Performance

This waiver permits the Commission to replace the original 17 WIA performance measures set forth in WIA §136(b) with the six Common Measures.

The Commission no longer reports to DOLETA on the following WIA measures:

- Adult and dislocated worker credential rates
- Participant and employer customer satisfaction
- Older youth measures
- Younger youth measures

The Commission continues to report on the three adult Common Measures and the three youth Common Measures.

Rapid Response/Incumbent Worker Training

This waiver permits the Commission to use up to 20 percent of rapid response funds for incumbent worker training only as part of a layoff aversion strategy. All training delivered under this waiver is restricted to skill attainment activities.

Contracting for Board Performance Measures

This waiver permits the Commission to develop methodologies that allow greater flexibility in contracting Board performance measures. The Commission will continue to track and report the six Common Measures at the state and Board levels. However, the Commission may choose not to use all six measures in its Board contracts. The Commission has developed integrated Board-contracted measures.

Extension of Certification Period for Currently Certified Training Providers

This waiver permits the Commission to extend the period of eligibility for training providers currently certified under the WIA Eligible Training Provider System (ETPS).

WIA sets forth the subsequent eligibility performance reporting requirements for all training providers. To eliminate the burden of subsequent eligibility requirements and prevent a decline in the number of Eligible Training Providers, DOLETA provided the Commission with a waiver that extends the period of training providers' initial eligibility. Because training providers apply for specific training programs to be certified for the Eligible Training Provider List, the eligibility period applies to a particular program and can vary initially by program, depending on the program's approval date. The application of this waiver extends the expiration dates of all approved training programs to the date through which this waiver has been approved—June 30, 2012.

Reallocation of Recaptured WIA Funds

This waiver permits the Commission, at its discretion, to consider additional factors in determining a workforce area's eligibility for reallocation of recaptured funds.

The Commission may consider:

- The amount available for redistribution;
- The amount requested by the Board;
- A demonstrated need for and ability to use additional funds to serve low-income individuals, public assistance recipients, dislocated workers, and unemployment insurance claimants;
- A demonstrated capacity to effectively expend funds to address the need for services in the workforce area;
- The Board's established plan for working with at least one of the Governor's industry clusters as specified in the Board's plan; and
- The Board's performance during the current and prior performance years.

The eligibility criteria for reallocation is set out in §800.77, Reallocation of Funds, of the Commission's General Administration rules.

Board-Specific Waivers

On May 9, 2011, DOLETA approved the Commission's request to extend the following Board-specific waivers through June 30, 2012:

Employer Contribution for Customized Training

This waiver permits the Commission to replace the WIA-required 50 percent employer match for customized training with a 10 to 50 percent sliding scale contribution based on the size of the business. Boards choosing to implement this waiver must adhere to the following sliding scale:

- No less than 10 percent contribution for employers with 50 or fewer employees
- No less than 25 percent contribution for employers with 51–250 employees
- No less than 50 percent contribution for employers with more than 250 employees

When determining the funding source for customized training, Boards must use the appropriate program funds for the appropriate WIA eligible population. For example, Boards must:

- use WIA adult funds when providing customized training to low-income adults;
- use WIA dislocated worker funds when providing customized training to dislocated workers; and
- ensure that customized training provided with WIA statewide and local activity funds serves WIA-eligible individuals.

Transferring Funds between Adult and Dislocated Worker Programs

This waiver permits the Commission to approve transfer amounts of up to 50 percent of workforce area allocations between the WIA adult and dislocated worker formula funding streams, as requested by Boards.

This waiver must be governed by a locally developed policy. As required by Commission rule §802.1(f) and as detailed in WD Letter 10-07, Board members must take such actions in an open meeting.

The policy development process must include:

- a public review and comment period, published throughout the workforce area; and
- dialogue concerning the benefits and consequences of transferring the funds.

Note: Although the Commission understands that all workforce areas are subject to unforeseen events that can affect service delivery, requests for additional assistance funds necessitated by prior funds transfers will be denied.

Boards choosing to implement this waiver must submit a Contract Action Request (CAR) form to the Commission, provided with WD Letter 04-10, issued on January 28, 2010.

Older and Out-of-School Youth Use of Eligible Training Provider List

This waiver permits the Commission to allow Boards the option of using ETPS to secure training providers for older and out-of-school youth through the use of Individual Training Accounts (ITAs).

Older (ages 19–21) and out-of-school youth use of ETPS and ITAs must be governed by locally developed policy. Local policies must be developed with input from the community, including an opportunity for a public review and comment period published widely throughout the workforce area. As required by Commission rule §802.1(f) and as detailed in WD Letter 10-07, Board members must take such actions in an open meeting.

WIA Formula Funds Used as Local Activity Funds

Under this waiver, Boards are permitted to designate up to 10 percent of WIA dislocated worker funds and up to 10 percent of WIA adult funds as local activity funds to use for incumbent worker training only as part of a layoff aversion strategy. Use of WIA adult funds must be restricted to serving low-income adults under this waiver. All training delivered under this waiver is restricted to skill attainment activities.

To identify a need for additional flexibility, Boards choosing to designate WIA dislocated worker and adult funds as local activity funds must determine if a layoff aversion strategy is feasible.

DOLETA Training and Employment Guidance Letter (TEGL) No. 30-09, issued on June 8, 2010, defines layoff aversion and provides guidance on the appropriate use of WIA-funded incumbent worker training for layoff aversion. While incumbent worker training is only one facet of layoff aversion strategies, TEGL 30-09 expands on previous guidance issued in TEGL 26-09.

DOLETA considers a layoff averted when:

- a worker's job is saved with an existing employer that is at risk of downsizing or closing; or
- a worker at risk of dislocation transitions to a different job with the same employer or a new job with a different employer and experiences no, or a minimal period of, unemployment.

Boards may consider the following criteria when identifying appropriate uses of local activity funds for layoff aversion activities:

- How employers are selected (i.e., announced layoffs through a Worker Adjustment and Retraining Notification, other public notice, or other means; reduced employee hours; or another indicator of economic difficulty that could be addressed through layoff aversion strategies);
- Whether layoff aversion strategies are the appropriate solution for an individual employer, and whether training will provide the employer with the tools it needs to maintain operations and avoid closure or layoffs; and
- The resulting employer commitment, either to retain the employee, to pay the employee a higher wage, or to otherwise benefit the employee.

Prior to offering incumbent worker training as a layoff aversion strategy, Boards must develop:

- a strategy that addresses:
 - which target industries and economic sectors will benefit from such training;
 - the type of training to be delivered and the skills that will be obtained; and
 - other Workforce Solutions Office and partner services that will be offered to affected employees and employers; and
- criteria for determining whether the provision of training would avert a layoff and whether the actual training is appropriate.

Implementation Requirements

Once a need for layoff aversion is determined, Boards choosing to use WIA dislocated worker and adult funds as local activity funds must:

- submit a CAR form to the Commission;
- submit a Local Activity Funds Designation Request form to the Commission;
- continue to operate under the current 10 percent limit on local administrative costs, with no separate amount set aside for administration of such activities;
- designate up to 10 percent of the workforce area's original WIA dislocated worker allocations and/or up to 10 percent of the workforce area's original WIA adult allocations as local activity funds; and
- continue to meet performance goals for WIA adult and dislocated worker formula allocations, and commit to specific performance outcomes for any services and activities provided using local activity funds.

WD Letter 04-10, issued January 28, 2010, provided Boards with:

- a CAR form;
- an Local Activity Funds Designation Request form; and
- instructions for using the forms.

The designation in the contract amendment will be written for an amount not to exceed the requested amount. If a Board's planned activities are completed for an amount less than the designation request, the Board may use the remaining dollars in the fund stream of origin.

Boards may redesignate local activity funds as WIA formula allocations at any time prior to the contract end date. The funds will retain their original WIA adult or dislocated worker classification.

Financial Reporting Requirements

Boards must track and report local activity funds through the online expenditure reporting system in accordance with WD Letter 03-11 and any subsequent guidance.

Expenditure Requirements

Boards must be aware that Commission rule §800.63(k) requires Boards to meet an 80 percent expenditure benchmark to be eligible to receive statewide activity funds. The 80 percent applies to the total amount of a Board's formula allocations, including any local activity funds.

Performance Reporting—TWIST Funding Sources

Boards must use the following The Workforce Information System of Texas (TWIST) fund codes to report activities and services provided with local activity funds. (*Note:* Individuals served with these funds are included in Common Measures.)

TWIST Fund Code	Fund Name	Eligibility	Services
158	WIA Adult Local Activity	Only basic WIA eligibility applies, i.e., citizenship/alien status (authorization to work), Selective Service registration, and age requirements.	Layoff aversion only
159	WIA Dislocated Worker Local Activity	Only basic WIA eligibility applies, i.e., citizenship/alien status (authorization to work), Selective Service registration, and age requirements.	Layoff aversion only

Employer Reimbursement for On-the-Job Training

This waiver permits the Commission to increase the OJT employer reimbursement rate using a sliding scale based on the size of the employer's business.

The waiver permits use of the following sliding scale:

- For employers with 250 or fewer employees, reimbursement of up to 75 percent is permitted.
- For employers with 251 or more employees, reimbursement remains at 50 percent.

When determining the funding source for OJT, Boards must use the appropriate program funds for the appropriate WIA-eligible population. For example, Boards must:

- use WIA adult funds when providing OJT to low-income adults;
- use WIA dislocated worker funds when providing OJT to dislocated workers; and
- ensure that OJT provided with WIA statewide and local activity funds serves WIA-eligible individuals.